

1                   A bill to be entitled  
2       An act relating to rural communities; creating s.  
3       288.062, F.S.; providing a short title; providing  
4       definitions; requiring the Department of Economic  
5       Opportunity to accept applications seeking approval as  
6       growth funds; requiring that the applications include  
7       certain materials, including an application fee;  
8       requiring the department to grant or deny the  
9       application within a specified time; prohibiting the  
10      department from approving more than a certain amount  
11      of investment authority or investor contributions;  
12      requiring the department to deny an application under  
13      certain circumstances; authorizing an applicant whose  
14      application was denied to provide additional  
15      information within a certain timeframe; prohibiting  
16      the department from reducing the investment authority  
17      of an application or denying an application for  
18      reasons other than the ones listed; requiring the  
19      department to certify approved applications; requiring  
20      the growth fund to collect contributions and  
21      investments within a certain timeframe; requiring the  
22      department to provide a tax credit certificate;  
23      authorizing the department to revoke a growth fund's  
24      certification under specified conditions; granting a  
25      credit against state premium tax liability for  
26      specified investors; providing restrictions on the

27        credit; requiring that a taxpayer claiming a credit  
28        submit a copy of the tax credit certificate with his  
29        or her tax return; requiring the department to revoke  
30        the tax credit certificate under certain  
31        circumstances; providing a formula for calculating the  
32        maximum amount of investments; specifying a time  
33        period within which a growth fund may correct  
34        violations; requiring the department to distribute  
35        reverted investment authority among certain growth  
36        funds; authorizing the growth fund to submit an exit  
37        application; providing procedures for use by the  
38        department in handling exit applications; authorizing  
39        the growth fund to request specified written opinions  
40        from the department; specifying procedure for  
41        recognizing a new principal place of business  
42        operations; requiring the growth fund to submit a  
43        report to the department at a specified time;  
44        requiring the growth fund to submit an annual report  
45        to the department; requiring that the annual report  
46        include certain information; providing for rulemaking;  
47        requiring the department to notify the Department of  
48        Revenue of any insurance company that is allocated tax  
49        credits; providing applicability; providing an  
50        effective date.

51  
52    Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Section 288.062, Florida Statutes, is created  
55 to read:

56 288.062 Florida Rural Jobs and Business Recovery Act.—

57 (1) This section may be cited as the "Florida Rural Jobs  
58 and Business Recovery Act."

59 (2) The following terms when used in this section have  
60 following meanings except where the context clearly indicates a  
61 different meaning:

62 (a) "Affiliate" means an entity that directly, or  
63 indirectly through one or more intermediaries, controls, is  
64 controlled by, or is under common control with another entity.  
65 For the purposes of this paragraph, an entity is "controlled by"  
66 another entity if the controlling entity holds, directly or  
67 indirectly, the majority voting or ownership interest in the  
68 controlled entity or has control over the day-to-day operations  
69 of the controlled entity.

70 (b) "Closing date" means the date on which a growth fund  
71 has collected all amounts specified by paragraph (8)(a).

72 (c) "Department" means the Department of Economic  
73 Opportunity.

74 (d) "Full-time high wage employment position" means an  
75 employment position that is filled, pays a high wage and  
76 requires at least 35 hours of work per week or any other period  
77 of time generally accepted by custom, industry or practice as  
78 full-time employment.

79        (e) "Growth business" means a business that, at the time a  
80 growth fund initially invests in the business:

81        1. Has fewer than 200 employees;

82        2. Has its principal business operations in at least one  
83 growth zone in the state; and

84        3. Is engaged in North American Industry Classification  
85 System sectors: 11, 21, 22, 23, 31-33, 48-49, 54 or 62 or, if  
86 not engaged in such industries, the department determines that  
87 the investment will create new jobs or result in jobs retained.

88        (f) "Growth fund" means an entity certified by the  
89 department under subsection (7).

90        (g) "Growth investment" means any capital or equity  
91 investment in a growth business or any loan to a growth business  
92 with a stated maturity at least 1 year after the date of  
93 issuance.

94        (h) "Growth zone" means all locations outside census  
95 places with a population greater than or equal to 50,000.

96        (i) "High wage" means a wage in any county that is greater  
97 than 100 percent of the county average.

98        (j) "Investment authority" means the amount certified by  
99 the department under subsection (7). At least 75 percent of a  
100 growth fund's investment authority must consist of investor  
101 contributions.

102        (k) "Investor contribution" means a cash investment in a  
103 growth fund by an entity that is subject to the state premium  
104 tax under ss. 624.509 and 624.5091. The cash investment must

105 equal the amount specified for that entity in the department's  
106 approval of a growth fund's application under subsection (4).  
107 The cash investment shall purchase an equity interest in the  
108 growth fund or purchase, at par value or premium, a debt  
109 instrument that has a maturity date at least 5 years from the  
110 closing date and a repayment schedule that is no greater than  
111 level principal amortization over 5 years.

112 (1) "Jobs retained" means the number of full-time high  
113 wage employment positions that existed before the initial growth  
114 investment in a growth business and for which the growth  
115 business's chief executive officer or similar officer certifies  
116 that the employment positions would have been eliminated but for  
117 the initial growth investment.

118 (m) "New annual jobs" means the difference between:

119 1.a. The average monthly number of full-time high wage  
120 employment positions at a growth business in the preceding  
121 calendar year; or

122 b. If the initial growth investment occurred during the  
123 preceding calendar year, the average monthly number of full-time  
124 high wage employment positions for the months during which the  
125 initial growth investment was made through the end of the  
126 preceding calendar year; and

127 2. The number of full-time high wage employment positions  
128 the growth business on the date of the initial growth  
129 investment.

131 If the resulting total is less than zero, the new annual jobs  
132 amount is equal to zero.

133 (n) "Principal business operation" of a business is the  
134 location or locations where at least 60 percent of the  
135 business's employees work or where the employees who are paid at  
136 least 60 percent of the business's payroll are located. A  
137 business that agrees to relocate or hire new employees using the  
138 proceeds of a growth investment to establish its principal  
139 business operation in a growth zone in the state is deemed to  
140 have its principal business operations in the new location  
141 provided it satisfies this definition within 180 days after  
142 receiving the growth investment, unless the department agrees to  
143 a later date.

144 (o) "State premium tax" means the tax identified in s.  
145 624.509 or s. 624.5091.

146 (3) Beginning September 1, 2019, the department shall  
147 accept applications for approval as a growth fund on a form  
148 adopted by the department. The application shall include the  
149 following:

150 (a) The total investment authority sought by the  
151 applicant.

152 (b) Evidence that:

153 1. The applicant or an affiliate of the applicant is  
154 licensed as a rural business investment company under 7 U.S.C.  
155 2009cc or as a small business investment company under 15 U.S.C.  
156 681, including a certificate executed by an executive officer of

157 the applicant attesting that such license remains in effect and  
158 has not been revoked, and

159 2. At least one principal in a rural business investment  
160 company or a small business investment company is, and must have  
161 been for at least four years, an officer or employee of the  
162 applicant or an affiliate of the applicant on the date the  
163 application is submitted.

164 (c) Evidence that as of the date the application is  
165 submitted, the applicant or affiliates of the applicant have  
166 invested at least \$100 million in nonpublic companies located in  
167 non-metropolitan counties as defined by the Office of Management  
168 and Budget within the Office of the President of the United  
169 States on the basis of county or county-equivalent units.

170 (d) An estimate of the total number of new annual jobs  
171 that will be created and jobs retained over the life of the  
172 program in this state because of the applicant's growth  
173 investments.

174 (e) A business plan that includes a revenue impact  
175 assessment projecting state and local tax revenues to be  
176 generated, as well as state expenditures to be reduced, by the  
177 applicant's proposed growth investments, prepared by a  
178 nationally recognized third-party independent economic  
179 forecasting firm using a dynamic economic forecasting model that  
180 analyzes the applicant's business plan over the 10 years  
181 following the date the application is submitted to the  
182 department.

183       (f) A signed affidavit from each investor stating the  
184 amount of investor contribution the investor will make.

185       (4) (a) Within 45 days after receipt of a completed  
186 application containing the information set forth in subsection  
187 (3), the department shall approve or deny the application.

188       (b) The department shall deem applications that are  
189 received on the same day as having been received simultaneously.

190       (c) The department shall approve investment authority up  
191 to an amount that would allow no more than \$5 million in tax  
192 credits to be taken in any one year, excluding any credits that  
193 are carried forward pursuant to paragraph (10) (c). No more than  
194 \$25 million in tax credits in total may be approved by the  
195 department under the program. If requests for investment  
196 authority exceed this tax credit limitation, the department  
197 shall proportionally reduce the investment authority and the  
198 investor contributions for each approved application as  
199 necessary to avoid exceeding the limit.

200       (d) A commitment by the growth fund applicant to give  
201 first priority to growth investments located in those counties  
202 designated by Federal Emergency Management Agency declaration  
203 FEMA-4399-DR.

204       (5) The department shall deny an application if:

205       (a) The application is incomplete;

206       (b) The applicant does not satisfy the criteria set forth  
207 in subsection (3);

208       (c) The revenue impact assessment submitted under



209 subparagraph (3)(e) does not demonstrate that the applicant's  
210 business plan will result in a positive revenue impact on this  
211 state over a 10-year period that exceeds the cumulative amount  
212 of tax credits that would be issued to the applicant's  
213 investors;

214 (d) The investor contributions described in affidavits  
215 submitted under paragraph (3)(f) do not equal at least 75  
216 percent of the total amount of investment authority sought under  
217 the applicant's business plan; or

218 (e) The department has already approved the maximum amount  
219 of investment authority and investor contributions allowed under  
220 subsection (4).

221 (6) If the department denies an application, the  
222 applicant, within 15 days after the denial, may provide  
223 additional information to the department to cure any defects in  
224 the application identified by the department, except for failure  
225 to comply with paragraphs (5)(c), (d), or (e). The department  
226 shall review and reconsider such applications within 30 days of  
227 receipt and before approving any pending applications submitted  
228 after the original submission date of the reconsidered  
229 application.

230 (7) The department shall not reduce the requested  
231 investment authority or deny a growth fund application for  
232 reasons other than those described in subsection (4) or  
233 subsection (5). After the department approves an application, it  
234 shall certify: (i) the applicant as a growth fund, (ii) the

235 amount of the applicant's investment authority, (iii) the  
236 investor contributions required from each investor that  
237 submitted an affidavit with the growth fund's application, and  
238 (iv) the number of new annual jobs and jobs retained that will  
239 be required of the growth fund, as prorated, based on the  
240 investment authority awarded to the growth fund.

241 (8)(a) Within 60 days after receiving the certification  
242 under subsection (7), a growth fund shall collect all investor  
243 contributions and collect additional investments of cash that,  
244 when added to the investor contributions, at least equal the  
245 growth fund's investment authority. Within 65 days after  
246 receiving the certification issued under subsection (7), a  
247 growth fund shall send to the department documentation that it  
248 has collected the amounts described in this subsection. At least  
249 10 percent of the growth fund's investment authority must  
250 consist of equity investments contributed by affiliates of the  
251 growth fund. The growth fund shall report to the department the  
252 date on which the investor contributions and additional  
253 investments of cash were collected.

254 (b) Upon receipt of the documentation required by  
255 paragraph (a), the department shall provide a tax credit  
256 certificate to each taxpayer who has made an investor  
257 contribution in the amount of the investor contribution.

258 (9) If the growth fund fails to fully comply with  
259 subsection (8), the department shall revoke the growth fund's  
260 certification and the corresponding investment authority and

investor contributions will not count toward the limits on the program size set forth in subsection (4). The department shall first award revoked investment authority pro rata to each growth fund that was awarded less than the investment authority for which it applied, and a growth fund may allocate the associated investor contribution authority to any taxpayer with state premium tax liability in its discretion. Any remaining investment authority may be awarded by the department to new applicants.

(10) (a) Any taxpayer that makes an investor contribution is vested with an earned credit against state premium tax liability equal to that investor's investor contribution. The credit may be used over 5 years such that 20 percent of the credit is applied in each of the taxable years that includes the year of the closing date through the fourth anniversary of the closing date, unless a specific request is made to carry them forward for a period not to exceed 10 years.

(b) The credit is nonrefundable and may not be sold, transferred, or allocated to any other entity other than an affiliate that was an affiliate at the time of the submission of the investor's affidavit included in the growth fund's application.

(c) The amount of the credit claimed by a taxpayer may not exceed the amount of such taxpayer's state premium tax liability for the tax year for which the credit is claimed.

(d) A taxpayer claiming a credit under this section shall

287 submit a copy of the tax credit certificate with the taxpayer's  
288 return for each taxable year for which the credit is claimed.

289 (e) The credit shall be allowed after deducting from the  
290 tax the deductions for assessments made pursuant to s. 440.51;  
291 the credits for taxes paid under s. 175.101 and 185.08; the  
292 credits for income taxes paid under chapter 220; the credit  
293 allowed under s. 624.509(5), as such credit is limited by s.  
294 624.509(6); and the credit allowed under s. 624.51055.

295 (11) The department must revoke the tax credit  
296 certificates issued under paragraph (8)(b) if any of the  
297 following occur with respect to a growth fund before the growth  
298 fund exits the program in accordance with paragraph (15)(a):

299 (a) The growth fund does not invest 100 percent of its  
300 investment authority in growth investments in this state within  
301 two years of the closing date;

302 (b) The growth fund, after initially satisfying paragraph  
303 (a), fails to maintain growth investments equal to 100 percent  
304 of its investment authority until the sixth anniversary of the  
305 closing date. For purposes of this paragraph, an investment is  
306 "maintained" even if it is sold or repaid so long as the growth  
307 fund reinvests an amount equal to the capital returned or  
308 recovered from the original investment, exclusive of any profits  
309 realized, in other growth investments in this state within 12  
310 months of the receipt of such capital. Amounts received  
311 periodically by a growth fund shall be treated as continuously  
312 invested in growth investments if the amounts are reinvested in

one or more growth investments by the end of the following  
calendar year;

(c) The growth fund, before exiting the program in  
accordance with paragraph (15)(a), makes a distribution or  
payment that results in the growth fund having less than 100  
percent of its investment authority invested in growth  
investments in this state or available for investment in growth  
investments and held in cash and other marketable securities;

(d) The growth fund invests in a growth business that  
directly or indirectly through an affiliate owns, has the right  
to acquire an ownership interest, makes a loan to, or makes an  
investment in the growth fund, an affiliate of the growth fund,  
or an investor in the growth fund. This paragraph does not apply  
to investments in publicly traded securities by a growth  
business or an owner or affiliate of such growth business. For  
purposes of this paragraph, a growth fund is not considered an  
affiliate of a growth business solely because of its growth  
investment.

(12) Before making a growth investment, a growth fund, may  
request a written opinion from the department as to whether the  
business in which it proposes to invest satisfies the definition  
of a growth business. The department, not later than the 15th  
business day after the date of receipt of the request, shall  
provide the growth fund with a determination letter providing  
its opinion. If the department fails to issue a determination  
letter by the 15th business day, the business in which the

339 growth fund proposes to invest shall be considered a growth  
340 business.

341 (13) The maximum amount of growth investments in a growth  
342 business, including amounts invested in affiliates of the growth  
343 business, that a growth fund may count in satisfying the  
344 requirements of paragraphs (11)(a) and (b) is the greater of \$5  
345 million or 20 percent of its investment authority, exclusive of  
346 repaid or redeemed growth investments.

347 (14) Before revoking a tax credit certificate under  
348 subsection (13), the department shall notify the growth fund of  
349 the reasons for the pending revocation. The growth fund shall  
350 have 90 days from the date the notice was received to correct  
351 any violation outlined in the notice to the satisfaction of the  
352 department and avoid revocation of the tax credit certificate.

353 (15) If the department revokes any tax credit certificates  
354 under subsection (11), the associated investment authority and  
355 investor contributions will not count toward the limit on total  
356 investment authority and investor contributions described in  
357 subsection (4). The department shall first award reverted  
358 investment authority pro rata to each growth fund that was  
359 awarded less than the requested investment authority for which  
360 it applied, and such growth fund may allocate the associated  
361 investor contribution authority to any taxpayer with state  
362 premium tax liability in its discretion. The department may  
363 award any remaining investment authority to new applicants.

364 (16) (a) On or after the seventh anniversary of the closing

365 date, a growth fund may apply to the department to exit the  
366 program and no longer be subject to regulation except as set  
367 forth in paragraph (b). The department shall approve or deny the  
368 application within 30 days of receipt. In evaluating the  
369 application, the fact that no tax credit certificates have been  
370 revoked and that the growth fund has not received a notice of  
371 revocation that has not been cured pursuant to subsection (14)  
372 is sufficient evidence to prove that the growth fund is eligible  
373 for exit. The department shall not unreasonably deny an  
374 application submitted under this paragraph. If the application  
375 is denied, the notice shall include the reasons for the  
376 determination.

377 (b) After its exit from the program in accordance with  
378 paragraph (a), a growth fund may not make distributions or pay  
379 any fees except as allowed under subsection (11)(c) to its  
380 investors unless it has made growth investments equal to at  
381 least 150 percent of its investment authority. Each growth fund  
382 shall continue to report the amount of growth investments made  
383 to the department annually until it has made growth investments  
384 equal to at least 150 percent of its investment authority.

385 (c) After its exit from the program in accordance with  
386 paragraph (a), at any time the growth fund proposes to make a  
387 distribution to its investors that, when added to all previous  
388 distributions to its investors, exceeds its investment  
389 authority, the growth fund shall remit to the department a  
390 payment equal the product of the proposed distribution and the

391 difference between one and a fraction, the numerator of which is  
392 the aggregate number of new annual jobs and jobs retained  
393 reported to the department pursuant to subsection (18) and the  
394 denominator of which is the number of new annual jobs and jobs  
395 retained as set forth in the growth fund's certification. No  
396 payment is due if the aggregate number of new annual jobs and  
397 jobs retained as of the date of the proposed distribution equal  
398 or exceed the number of new annual jobs and jobs retained as  
399 projected set forth in the growth fund's certificate issued  
400 pursuant to subsection (7).

401 (17) The department may not revoke a tax credit  
402 certificate after a growth fund exits from the program.

403 (18) (a) Each growth fund shall submit an annual report to  
404 the department on or before the 5th business day after each  
405 anniversary of the closing date prior to its exit from the  
406 program in accordance with paragraph (16) (a). The report shall  
407 identify each growth investment made by the growth fund and  
408 shall include:

409 1. A bank statement evidencing each growth investment if  
410 not previously reported;

411 2. The name, location and industry of each growth business  
412 receiving a growth investment, including either the  
413 determination letter set forth in subsection (12) or evidence  
414 that the business qualified as a growth business at the time the  
415 investment was made, if not previously reported;

416 3. The number of full-time high wage employment positions



417 at each growth business and jobs retained on the date of the  
418 growth fund's initial growth investment;

419 4 The number of new annual jobs and jobs retained at each  
420 growth business, provided the number of jobs retained may not  
421 exceed the number of jobs retained reported in subparagraph (3)  
422 and such number of jobs retained must be reduced if the full-  
423 time high wage employment positions reported drops below the  
424 jobs retained reported in subparagraph (3);

425 5. The average annual salary of the positions described in  
426 subparagraph (4); and

427 6. The cumulative amount of growth investments made in  
428 growth businesses;

429 7. Any other information required by the department.

430 (b) The growth fund is not required to provide information  
431 with respect to growth investments that have been redeemed or  
432 repaid as part of the annual report set forth paragraph (a) but  
433 shall provide such information if available.

434 (19) The department:

435 (a) May adopt rules to implement the provisions of this  
436 section.

437 (b) Shall adopt forms and notices to implement this  
438 section.

439 (c) Shall notify the Department of Insurance of the name  
440 of any insurance company allocated tax credits under this act  
441 and the amount of such credits.

442 (20) A growth fund that issues a growth investment

443 approved by the department shall be deemed a recipient of state  
444 financial assistance under s. 215.97, the Florida Single Audit  
445 Act. However, a growth fund business that receives a growth fund  
446 investment is not a subrecipient for the purposes of s. 215.97

447 (21) The provisions of this section apply only to tax  
448 returns or reports originally due on or after January 1, 2020.

449 (22) This section expires on December 21, 2030.

450 Section 2. This act shall take effect July 1, 2019.